

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES
SPECIAL INVESTIGATIONS DIVISION
CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-3275

IRA REINER, DISTRICT ATTORNEY

(213) 974-7435

April 19, 1988

Robert T. Grimm, Captain
Homicide Bureau
Los Angeles Sheriff's Department
211 West Temple Street
Los Angeles, California 90012

Dear Captain Grimm,

Re S.I.D. File No. 100-4999
L.A.S.D. File No. 088-3275

This office has reviewed the circumstances of the death of Hong Pyo Lee, age 21. Lee was shot to death on March 8, 1988, by deputies of the Los Angeles Sheriff's Department.

In any case where police officers take a life in the course of duty, this office pursues a separate inquiry into the matter, apart from the efforts of police investigators. That practice was followed in this case.

We learned of this incident within two hours of its taking place. Deputy District Attorney Richard Healey and District Attorney Investigator [redacted] were dispatched to the scene of events, a loading dock area behind a factory in Long Beach. They made their own observations of the physical evidence at the scene, and interviewed truck driver [redacted]. (This interview was tape-recorded, and will be quoted from herein).

On subsequent days, Investigator [redacted] interviewed witnesses [redacted] and [redacted], who live in the vicinity. He also interviewed Long Beach Police Officers [redacted] and [redacted], who witnessed the shooting. District Attorney Investigator [redacted] interviewed [redacted], who saw the shooting from the back seat of a patrol car while in custody for drunk driving.

On March 29, Healey and District Attorney Investigator [redacted], who is fluent in Korean, visited the home of Mr. and Mrs. [redacted], [redacted] of Hong Pyo Lee. They explained to the [redacted] the purpose of this investigation. They tried to provide an explicit and clear account of events. And they listened to questions and concerns raised by the [redacted]. We have sought to address those concerns in this report.

OBSERVATIONS AT THE SCENE

Upon reaching the loading dock area, Healey and [redacted] took note of Lee's Audi automobile, its front end resting against a fence. The glass of the rear window, right side back window, and left side driver's window had been smashed. Bullet holes were visible inside and outside the car, most noticeably a cluster in the back of the driver's seat. Two "hash pipes" - implements for the smoking of drugs - were visible in the car's interior. Each contained a residue of ash, later identified through chemical tests as cocaine and concentrated cannabis respectively. The left rear bumper of the Audi had been crumpled slightly, and flecks of paint chipped away from it.

Lee lay dead on the ground just outside the open car door. Bullet wounds to his back and neck were clearly apparent. A beeper paging device was clipped to his waistband. No weapons could be seen in his possession or inside the car.

Seventy feet from the back of Lee's car, three Sheriff's patrol cars sat parked on open pavement in a rough semi-circle, facing toward the Audi. Flecks of paint identical to those from the Audi were visible on the right front bumper of the nearest patrol car. Ten feet from the Sheriff's cars sat the Long Beach patrol car of Officers [redacted] and [redacted]. The ground between the Audi and the police cars was strewn about with shells, ejected loaders, and a police flashlight. Tire tread marks criss-crossed the area.

Deputy Sheriff M. Coleman arrived at the scene, measured significant distances, and prepared a sketch to scale.



We have attached a copy of that sketch to this report. (It will be noted that one of the three Sheriff's cars does not appear in the drawing. That car was moved in the immediate aftermath of the shooting, and only later returned to its approximate original position).

FACTS

Sometime in the late evening of March 7, Hong Pyo Lee left his [redacted] and drove off into the night. How he spent the next several hours, or with whom, is not known. Just after 2:30 the following morning, he was in Compton, turning from Atlantic Drive onto Atlantic Avenue. As he did so, he passed through a stop sign in full view of Deputies McLeod and Lee. Though the deputies were encumbered with their prisoner, [redacted], in the back seat of their car, they decided to pause for a moment to cite the driver of the Audi. They fell in behind the Audi and switched on their flashing red lights.

After a few moments it became clear that the driver of the Audi did not intend to stop. The deputies put out a radio call for help:

> (Dispatcher): Confirm. You want a unit southbound Atlantic from Alondra...?
>
> (Deputies): That's affirmative. We've got a car that's failing to yield. However we're (with a prisoner) and we can't take a pursuit. It's a white Audi with a male Oriental driver, no plates. He's only doing about 35.

For the next nine minutes, the Audi followed a meandering path through the highways and streets of north Long Beach. Deputies Chapman and Papini in their car, and Sgt. Tanaka in his, joined the pursuit. Lee held his speed steady at about 35 m.p.h., but remained indifferent to the flashing lights and howling sirens behind him. A Sheriff's helicopter positioned itself overhead. At a loss to explain why the Audi would not pull over, one deputy broadcast that the car was a "possible Victor" (police parlance for "stolen car").

At length, the Audi made its way down Thompson Street and into the fenced loading dock area. His path now cut off, Lee came to a stop. Their sirens still wailing, the deputies' cars stopped behind him, ten or more feet away. Thirty feet away, truck driver [redacted], awakened by the commotion, sat up in the cab of his big rig and looked down upon the scene. Overhead, one of the deputy sheriffs in the helicopter described events to the dispatcher:

(Deputy): O.K. she's... the vehicle stopped at the west end, dead end of...looks like Lincoln (Street).

(Dispatcher): Confirm. In a parking lot? Or dead end of a street?

(Deputy): Dead end parking lot. The vehicle just t.c.'d (collided) into a, looks like a fence.

(Dispatcher): Ten-four. The vehicle t.c.'d into a fence, the west dead end of the parking lot on Lincoln.

(Deputy): 245. Appeared to be trying to back into the deputies at this time.

"245" is police parlance for "assault with a deadly weapon."

On the tape-recording of the helicopter transmission, fourteen seconds separate the announcement that the "vehicle stopped" from the announcement that it "t.c.'d" into the fence. Truck driver [redacted] described what happened in those fourteen seconds:

> He stopped there and the officer tried to get in. He had the doors locked, apparently... So the officer tried to break the windshield, and then the guy started to back up... The other officer had to get the hell out of the road or he'd of got run over. So (the deputy)...he jumped back like it run over his toes or something...

And he starts ... He had the gun out. The guy wouldn't stop, or halt, or nothing, so (the deputy) started shooting. And that's when I...I was looking directly at it. I figured the other guy was going to start shooting at him, you know. The guy was defending his own life, that's all.

Q: (by Investigator [redacted]) The officer was?

A: Yeah .

* * *

Q: (by DDA Healey) When he came to the stop here, did the officers come up to both sides of his car, passenger and driver's side?

A: The other officer didn't have time to get up there before the guy started backwards...He was behind the car...

Q: Kind of heading for the passenger side?

A: Right.

Q: That's when the Audi went in reverse?

A: (Yes).

Q: And that's why he had to jump out of the way?

A: Yes, sir...

Q: And you said you had the impression that the officer was defending his own life?

A: For what I seen, yes, the officer was defending his own life.

Q: You mean from the car? Because the car might have hit him, is this...?

A: Oh yeah. The car would have run clear over him, you know, and if it had knocked him down, he'd of backed over him.



Q: Was the car backing up very rapidly?

A: No. It's...he's just like a steady thing coming back, see.

[redacted] added that the officers fired a continuous burst of shots as the car backed, stopped, then "went forward real fast". The Audi disappeared from [redacted]'s field of vision and rolled toward the fence where it came to rest. [redacted] did not know whether the Audi struck a patrol car as it backed up.

OTHER ACCOUNTS

The five deputies who approached Lee's car tell similar stories. As they began to climb out of their cars, the Audi backed up, bumped Deputy Chapman's patrol car, then pulled forward again. Lee remained seated within, looking from side to side as though "sizing up the situation", in Deputy Chapman's words. Chapman, believing that Lee might flee on foot, ran up to the car door and tugged at the handle. Finding it locked, he pounded on the driver's window with his gun, meaning to break out the glass and open the door.

The other deputies, a few paces behind Chapman, were spread out to the rear of the Audi, about to begin their approach down either side of it. Lee, looking back over his shoulder toward them, put the Audi into reverse. Tires squealing, the car backed up at what the deputies recall was great speed. "He's going to ram us." yelled Papini. Chapman sprang away from the driver's side door. All four deputies behind the Audi opened fire. McLeod and Papini fired six shots each, Lee four, and Tanaka one. All four men later reported that the Audi came directly at them, in a manner they perceived as threatening their lives. As the firing ended, the Audi coasted forward and struck the fence.

Long Beach Officers [redacted] and [redacted] arrived in the area a few moments after the deputies. As they alighted from their car, they saw Chapman step swiftly back from the Audi. The other deputies began firing. Neither officer saw the Audi move backwards. [redacted] says he diverted his eyes for a moment. [redacted] offers no explanation. He simply did not see the Audi move backwards.

Civilians [redacted] and [redacted] live on Stanley Street, a stone's throw from the loading dock. Neither saw the shooting. Each reports that he heard sirens, and cars go racing past. A voice cried "That (obscenity) tried to run me over." Moments later came gunfire.

[redacted] recalls that Lee's car plowed directly into the fence, without backing up. The deputies then ran up to it and began firing. At the moment these observations were made, the alcohol content of Valdez's blood stood at .17%. This is a high level, which suggests substantial impairment of the faculties of perception.

PHYSICAL EVIDENCE

Deputy Sheriff Van Etten, a specialist in accident investigation, examined Deputy Chapman's car, Hong Pyo Lee's car, and the ground between the two vehicles. He took note of tread marks on the pavement. These extended from the wheels of the Audi back toward the patrol car. Superimposed upon these tread marks, at a point roughly seventeen feet from the patrol car, were acceleration marks. This suggests that the wheels of the Audi spun rapidly at that point.

Van Etten gave it as his opinion that the Audi was traveling between five and ten miles per hour when it bumped Chapman's car. It was traveling between ten and fifteen miles per hour when it struck the fence.

AUTOPSY RESULTS

Lee was struck by eight bullets. All entered the body from the back and traveled toward the front. None bore the powder or sooting characteristic of shots fired at close range. Two wounds were to the back of the neck. The remaining six spread downward in a rough arc from the top of the right shoulder to below the right shoulder blade. Superficial cuts marked the face, presumably the consequence of the collision with the fence.

Chemical tests revealed the presence of cocaine in the blood and urine. Benzoylecgonine (or "b.e.") was also present in the blood.

We discussed the significance of these findings with Casey Collins, toxicologist in the Coroner's office. He explained that b.e. is a metabolite produced as the body's processes act upon cocaine. The level of cocaine in Lee's blood - .05 micrograms per millíliter ("ug/ul") - was not particularly high. The level of b.e. - 1.44 ug/ul - was a "decent" level, in Collins's words. Assuming that Lee had no cocaine in his system when he left the house, Collins concluded that Lee must have taken a substantial dose of the drug not long thereafter, perhaps reaching a level of .30 ug/ul cocaine in the blood, "definitely under the influence." At the time of the encounter with the deputies, several hours later, the impact of the drug was wearing off, but had not disappeared.

ANALYSIS

We are struck by the desperation with which Lee fled from deputies whose only intention at first was to give him a ticket. Clearly, Lee feared something worse than a ticket. Exactly what cannot now be known. We do recall in this context the cocaine in his body and car, as well as his unexplained presence in that part of town at so odd an hour.

That he was desperate is an important fact, for the deputies have described the actions of a desperate man. Their decision to fire was grounded upon the belief that the man they had trapped was so desperate that he would run them over rather than be taken. We must decide whether the deputies' belief was reasonable. And we must remember to view events as they appeared to the deputies at the time, not as they appear to us now in the light of later knowledge.

We observe as well that all four deputies who stood behind the Audi opened fire at the same instant. In that instant, each of the four concluded, separately and for himself, that he was in critical danger. The unanimity of the response suggests the reality of the provocation.

Critical points of law are made at CALJIC 5.12 (1979 Revision), which reads in part:

> In order to justify killing another person in self-defense, actual danger or great bodily injury is not necessary. On the other hand, a bare fear of death or great bodily harm is not sufficient.

Penal Code Section 198 strives to clarify the distinction between reasonable fear, on the one hand, and "bare fear", on the other:

> A bare fear of the commission of (death or great bodily injury), to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

A fuller clarification is found at CALJIC 5.51 (1977 Revision):

> Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable man in a like situation, seeking and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in self-defense upon such apperances and from such fear and honest conviction, his right of self-defense is the same whether such danger is real or merely apparent.

When Lee drove on, rather than pull over, the deputies did not know why he was fleeing from them. The possibilities were many. The car might be stolen. The driver might have just committed a robbery. The driver might be a wanted man. Given the neighborhood and time of night, the deputies braced themselves for the worst. To do otherwise would not have been prudent. Such was the deputies' state of mind at the moment Lee found himself boxed in and came to a stop.

We note that Lee had not surrendered, but simply run out of road. He gave no sign that he meant to surrender. To the contrary, he continued to operate the car as officers rushed upon him.

In retrospect we are not certain that Lee meant to run down any deputy. Perhaps he meant merely to flee. We are not certain that his car rushed back at the deputies with quite the speed they now recall. But these are perceptions formed at leisure, in quiet circumstances. Some allowance must be made for perceptions formed in the heat of the moment, by those who actually stood in the path of the car.

The deputies themselves describe an unquestionable case of self-defense. In this they receive powerful support from the accounts of [redacted] and the helicopter observer. The accounts of the other witnesses lend less support. The Long Beach officers do not recall that Lee's car came backwards. [redacted] and [redacted] suggest that a perceptible gap in time separated the rolling back of the car from the subsequent gunfire, as though the deputies pondered the matter a moment or two and then opened fire. We note that such conflicts in the evidence are not unusual, and do not necessarily have sinister significance. Under the pressure of shock and excitement, perceptions do become distorted and honest witnesses recall things differently.

Beyond that, our purposes do not require that we reconcile every single point of disharmony. It is enough to observe that substantial evidence militates in the deputies' favor: more than enough to rule out a criminal filing against them.

OTHER QUESTIONS

It has been suggested that racism played a role in Lee's death. The deputies would have been less quick to fire, goes the argument, had a white rather than an Asian sat in Lee's place. We can only point out that we found no evidence of this. One of the deputies who fired at Lee is himself of Asian descent. In the chaos of that moment, we doubt that Lee's race figured at all in the mind of any deputy.

The Audi is equipped with manual transmission. At its final resting point against the fence, the car appeared to be in first gear. Is it physically possible that Lee could have shifted from reverse to first and then driven forward while under such heavy gunfire? We believe so. It is not known at what precise moment Lee was struck;

he had perhaps already shifted to first before being hit. Nor is it clear that his wounds were instantly fatal; he might have been wounded but still able to drive for a few moments.

Why did the deputies approach Lee's car at all? Could they not have shielded themselves behind their cars, and ordered Lee over their loudspeakers to come out? We do not think that that would have been a sensible tactic for the deputies to use. They did not know whether Lee had a gun. They had reason to think that he might continue his flight on foot. It is true that the area is fenced in. But the deputies had not had time to study the terrain, and could not know for sure that all alleys of escape were cut off. They concluded that the best course was to rush Lee and end at once his freedom of movement. We do not quarrel with that choice of tactics.

It has been complained that as Lee lay dead or dying, no ambulance came until an hour or more had passed. The facts do not support this complaint. The shots were fired around 2:40 a.m. Paramedics were at the scene by 3:00 a.m., and declared Lee dead at 3:03.

After the gunfire, Lee was pulled from the car and handcuffed. He remained so until approximately 4:30 a.m. Initially, the handcuffing was a standard precaution, followed in any case where the prisoner is not visibly and certainly dead. Thereafter, the cuffs were left on to preserve the scene intact for homicide investigators.

The Lee family expressed anger that they were not permitted to view the body when they first presented themselves at the Coroner's office. We are told this was because the body was not yet prepared for removal to the mortuary. The Coroner's office follows a policy of not permitting viewing until such preparations are complete. Identifications are made on the basis of snapshots of the face. The soundness of that policy is, of course, outside our expertise. But it is followed in all cases.

CONCLUSION

There is much to regret in the death of Hong Pyo Lee. We are told that he was an unsettled young man who had begun to sort out his life. He may not in fact have intended harm to the deputies. His death is all the more tragic in that the train of events which brought it about was set in motion by himself. Had he not taken cocaine, had he not fled from the deputies, he would not have died in these circumstances.

Be that as it may, we have pointed out that the question is not whether Lee in his heart intended harm to the deputies. The question is how things looked from the deputies' point of view. We are satisfied that they did believe they were in danger, and had reasonable cause so to believe. Accordingly, we decline any criminal prosecution and consider this matter closed.

Very truly yours,

IRA REINER
District Attorney

CURT LIVESAY
Assistant District Attorney

By Richard Healey

RICHARD B. HEALEY
Deputy District Attorney

mhm